

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

In re

AMIR M. BOROCHOV,

Debtor.

SOL MASON, INC., and SOL MASON,

Plaintiff,

vs.

AMIR MICHAEL BOROCHOV,

Defendant,

and

OHANA INTERNATIONAL
ENTERPRISES, LTD.,

Garnishee.

Case No. 94-00655
Chapter 7

Adv. Pro. No. 94-0086

Re: Docket No. 107

MEMORANDUM OF DECISION ON WAGE GARNISHMENT

The question presented is the maximum amount that can be taken from a debtor's paycheck to pay a family support obligation and a judgment on another type of claim.

This court entered a nondischargeable judgment against the debtor and later

issued a writ of garnishment to the debtor's employer. The debtor is also subject to an order assigning a portion of his wages to pay spousal or child support (a "support order"). The judgment creditor contends that the employer paid too little on the garnishment. The employer now contends that it paid too much.

There are factual questions concerning the amount of the debtor's pay and the amounts paid on the garnishment and the support order. The court has set an evidentiary hearing to address these questions. The employer is attempting to obtain payroll records to answer these questions and the judgment creditor and the employer may agree to continue the evidentiary hearing so the employer can complete this work. This decision will address the legal issues presented in order to focus the evidentiary inquiry.

15 U.S.C. § 1673 limits the amount of wage garnishments:

(a) Maximum allowable garnishment

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions

(1) The restrictions of subsection (a) of this section do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of Title 11.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any

individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

Section 1673 is easy to apply when the debtor is subject to a support order or an ordinary garnishment. The statute is less clear, however, in a case where the debtor is subject both to a support order and an ordinary garnishment.

There are at least two ways to reconcile sections 1673(a) and (b).

The first way is to treat them as establishing two separate limitations which can be added to one another. In other words, support creditors could collect as much as 65 percent and ordinary creditors an additional 25 percent of the debtor's disposable earnings. This could leave the debtor with as little as ten percent of disposable income to support the debtor and, if the debtor remarries, a new spouse and family.

The second way treats the two limits as overlapping; if the amount payable to the support creditor under section 1673(b) exceeds the percentage payable under section 1673(a), the ordinary creditor gets nothing.

The case law uniformly follows the second approach. Long Island Trust Co. V. United States Postal Service, 647 F.2d 336 (2d Cir. 1981); Voss Products, Inc.,

v. Carlton, 147 F.Supp.2d 892 (E.D. Tenn. 2001); Lough v. Robinson, 111 Ohio App. 3d 149, 154-54, 675 N.E.2d 1272, 1275 (1996); Commonwealth Edison v. Denson, 144 Ill. App. 3d 383, 387-88, 494 N.E. 2d 1186, 1189-90, 98 Ill. Dec. 859, 862-63 (1986). As the decisions state, this view is consistent with the interpretation of the statute by the U.S. Department of Labor, 29 C.F.R. § 870.11(b)(2), and with the statute's policy of protecting consumers from excessive garnishments.

Therefore, I conclude that any amounts paid under the support order must be applied to the limit imposed by section 1673(a) and that, if the support payments exhaust the applicable limit under section 1673(a), the ordinary creditor is not entitled to any payments on account of the garnishment.

Section 1677 provides that the federal statute “does not annul, alter, or affect, or exempt any person from complying with, the laws of any State . . . prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter” Therefore, I must consider the limitations on garnishment under Hawaii state law.

Haw. Rev. Stat. § 652-1(a) limits wage garnishments to

A portion of the defendant's wages, salary, stipend, commissions, annuity, or net income under a trust (in this chapter included under the term "wages"), remaining after the deduction of any amounts required by law to be withheld by withholding the amount to be determined as

follows: five per cent of the first \$100 per month, ten per cent of the next \$100 per month, and twenty per cent of all sums in excess of \$200 per month, or an equivalent portion of the above amount per week, whether then or thereafter to become owing.


Haw. Rev. Stat. § 576E-16(c) provides for the issuance of support orders. It provides that:

The total amount withheld from the obligor's income, including the administrative fee [\$2 per paycheck payable to the Child Support Enforcement Agency], may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)). Any income withholding order or notice to withhold child support shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, and shall not be subject to the exemptions or restrictions contained in part III of chapter 651 and in chapters 652 and 653.

In other words, the Hawaii legislature adopted the federal percentage limitations on support orders. Like the federal statute, the Hawaii legislation does not explicitly state what happens when a debtor is subject to a support order and one or more ordinary garnishments. The most reasonable interpretation is the same as the federal statute; support creditors can collect up to 65 percent of the wages, and if the amount paid to the support creditor exhausts the lower percentage limitation applicable to ordinary creditors, the ordinary creditors get nothing.

In this case, the Hawaii limit is probably more favorable to the debtor than the federal limit, because the percentage limit on support orders is the same and the percentage limit on ordinary garnishments is lower. The exact amounts paid and

payable remain to be determined, however, at the evidentiary hearing.



/s/ Robert J. Faris
United States Bankruptcy Judge
Dated: 06/23/2008